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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,801	12/14/2001	Wilhelmus G.M. Bruls	P 284153 9407US/CNT/1	1643

909 7590 07/14/2003  
PILLSBURY WINTHROP, LLP  
P.O. BOX 10500  
MCLEAN, VA 22102

EXAMINER
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WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10014801

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on April 21, 2003

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1-27 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-27 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

Office Action Summary

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-12, 25 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide express support for a process comprising melt mixing a solid matrix polymer A with a **solid** masterbatch comprising the rubber dispersed in a matrix polymer B. The specification discloses that the dispersed rubber in matrix polymer B is obtained by melt mixing of matrix polymer B with the rubber but does not disclose that said masterbatch is solidified prior to admixing with the solid matrix A. Accordingly, since no express support can be found for said claimed feature, such is deemed new matter.

### *Claim Rejections - 35 USC § 102/103*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14-18, 20, 21, 24 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 5,889,112 (Shih et al) of record.

The compositions of the above-rejected claims are claimed in a product-by-process format. Patentability considerations must therefore be guided by the principles applicable to this claim format. It is well settled that the evaluation of such claims is based on the product rather than on the process steps, i.e., while the claims may recite process limitations, it is the patentability of the product which must be established. In re Thorpe, 227 USPQ 964. The product is unpatentable when the prior art discloses a product which reasonably appears to be either identical with or only slightly different from the claimed product. The burden shifts to applicants to provide objective evidence that the claimed products are not the same as or obvious from the products of the prior art.

***Claim Rejections - 35 USC § 103***

6. Claims 1-13, 19, 22, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,889,112 (Shih et al) cited hereinabove.

As now recited in the process claims, the matrix polymer A and the composition of rubber dispersed in matrix polymer B are melt blended from the solid state, which is contrary to the process used in the examples of Shih et al. Reference is made, however, to the ***all-solid*** stage feed process of Shih et al's third embodiment wherein both the first and second polymers are fed

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as solids (column 6, lines 16-19). Thus, contrary to applicants' assertion, the disclosure of Shih et al does not avoid a solid mixing process. In light of patentees' solid mixing process disclosure, it is maintained that it would have been obvious to one having ordinary skill in the art to have melt blended all the ingredients of the examples from the solid state with the reasonable expectation of success. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the presently process claims.

As to claim 13, in light of the disclosure at column 4, lines 21-25, it would have been obvious to one having ordinary skill in the art to have employed any other polymer, such as polyester, in lieu of the exemplified nylon with the reasonable expectation of success.

As to claim 19, in light of the disclosure at column 4, line 23, it would have been obvious to one having ordinary skill in the art to have employed a functionalized styrene-butadiene block copolymer in lieu of the exemplified ethylene copolymer rubber with the reasonable expectation of success.

### ***Response to Arguments***

7. Applicant's arguments filed April 21, 2003 have been fully considered but they are not persuasive.

Contrary to applicants' assertion, the disclosure of Shih et al does not avoid a solid mixing process. Reference is made to the *all-solid* stage feed process of Shih et al's third embodiment wherein both the first and second polymers are fed as solids (column 6, lines 16-19). In light of said solid mixing process disclosure, it is maintained that it would have been obvious to one having ordinary skill in the art to have melt blended all the ingredients of the examples from the solid state with the reasonable expectation of success. Accordingly, absent

evidence of unusual or unexpected results, no patentability can be seen in the presently process claims.

With respect to the product-by-process claims that recite the use of an ethylene/olefin copolymer obtained by polymerization in the presence of a metallocene catalyst, it is well settled that the evaluation of such claims is based on the product rather than on the process steps, i.e., while the claims may recite process limitations, it is the patentability of the product which must be established. In re Thorpe, 227 USPQ 964. The product is unpatentable when the prior art discloses a product which reasonably appears to be either identical with or only slightly different from the claimed product. The burden shifts to applicants to provide objective evidence that the claimed products are not the same as or obvious from the products of the prior art.

With respect to the process claims that recite the use of an ethylene/olefin copolymer obtained by polymerization in the presence of a metallocene catalyst, it is maintained that the disclosure of Shih et al is sufficiently generic to embrace and encompass any and all conventional ethylene copolymers with the reasonable expectation of success.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

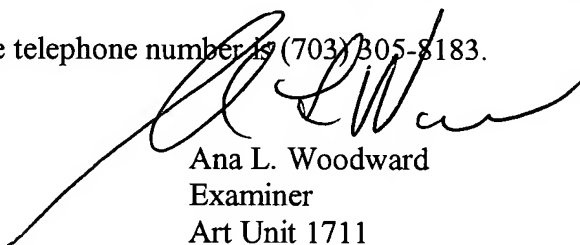
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (703) 308-2401. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 805-8183.



Ana L. Woodward  
Examiner  
Art Unit 1711

AW  
July 11, 2003